

SUMMARY OF LEGAL OPINION ON THE HANDLING OF FEDERAL FIRE REIMBURSEMENTS

A Report Prepared for the

Legislative Finance Committee

By
Gary Hamel

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Legislative Fiscal Division



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PURPOSE AND SCOPE

The purpose of this report is to provide an overview of a legal opinion that addresses a change in how federal fire reimbursements are handled.

BACKGROUND

As part of a cooperative agreement, the State of Montana sends personnel and equipment to assist other state and federal entities with fire suppression efforts. These costs, while initially incurred by DNRC, are reimbursed by the assisted entities. Once the reimbursement money is received, language in HB 2 directs it to be deposited in the general fund. Recent events have changed that process.

DNRC does not have sufficient authority in fiscal 2003 to pay fire suppression costs. Higher than average fire costs in fiscal 2002, coupled with two supplemental appropriations in fiscal 2002, have left the department in a particularly difficult position to pay fire costs in fiscal 2003.

After a series of discussions among legislative, executive, and Governor's office legal staff, the department decided to request an early payment of \$3.3 million of fire costs incurred for which Montana will receive reimbursement from the Forest Service and deposit that reimbursement into a federal special revenue account.

LEGAL OPINION SUMMARY

Since the handling of this reimbursement is unusual, LFD staff recently requested a legal opinion from Mr. Greg Petesch, the Legislative Branch Legal Services Director, regarding the recent decision to deposit federal fire suppression reimbursement money in a federal special revenue account and process a budget change document (BCD) to increase DNRC authority to pay fire costs with this money. A copy of this opinion has been attached. According to the opinion:

- Language in HB 2 requiring a deposit to the general fund is an invalid attempt to amend substantive law.
- The reimbursement of fire suppression funding is part of a contractual agreement that cannot be impaired.
- The federal reimbursement will not be deposited to the general fund. Rather, it will be deposited to a federal special revenue fund and a budget change document (BCD) will be processed to change the DNRC budget to reflect spending the federal revenue.

Language contained within HB 2 directs that all funds received as reimbursements (except for \$350,000 for personnel and equipment costs) be deposited into the general fund. Mr. Petesch has concluded that the practice of requiring that this type of reimbursement be deposited to the general fund is not on solid legal ground because it conflicts with 17-2-102 MCA. More specifically, section 17-2-102, MCA states that the reimbursement money is required to be deposited in a federal special revenue fund. Thus, the HB 2 language requiring the reimbursement deposit be made to the general fund is an invalid attempt to amend 17-2-102 MCA.

Although the analysis indicates that a deposit of a federal reimbursement should be made to a federal special revenue account, it further describes circumstances in which those funds could be deposited to

the general fund. Mr. Petesch's conclusion is based upon routine fire costs incurred while the state is not under a declaration of disaster or emergency. His legal opinion points out that 10-3-312(2) MCA allows for deposits to the general fund to replenish general fund expenditures incurred while under a declaration of disaster or emergency. According to the analysis, an argument could be made that under a declaration of disaster or emergency, reimbursement money could be deposited to the general fund. However, this issue was not within the scope of the legal opinion and will be explored as that situation occurs.

The opinion further describes the fire related expenditures as being part of the Interstate Mutual Aid Compact. This compact is a contractual relationship that exists among the DNRC, other states and several components of the federal government¹. This contractual relationship cannot be impaired by the legislature. DNRC is obligated to pass applicable portions of this money through to local entities as part of the contractual agreement. Therefore, DNRC must pay this money. One way for DNRC to spend the federal reimbursement is through a budget amendment authorized in 17-7-402, MCA.

According to Mr. Petesch, a budget amendment may not be approved for any matter that the requesting agency had knowledge of at a time when the proposal could have been presented to an appropriation subcommittee, the House Appropriations Committee, or the Senate Finance and Claims Committee unless the Legislative Finance Committee is given specific notice by the approving authority that significant identifiable events, specific to Montana and pursuant to the provisions or requirements of Montana State law, have occurred since the matter was raised with or presented for consideration by the legislature. Mr. Petesch points out that the September special session was too narrowly defined to include the fire reimbursement issue. It is unclear whether or not DNRC had knowledge it would be reimbursed by the federal government in a timely enough manner to present the issue during the August special session. Although the approving authority decides whether or not DNRC had this knowledge, the LFC can question this decision. Regardless, the LFC cannot deny a budget amendment.

According to DNRC staff, the paper work has been filed, and the Forest Service has given an early indication that payment will arrive in Montana by early October. If the payment arrives as planned, DNRC believes it will be able to manage its financial position until the legislature convenes in January 2003. However, if this reimbursement does not arrive in a timely manner, the consequences are serious and would likely require the legislature to reconvene for a third special session to address fire costs.

**LFD
COMMENT**

Based upon Mr. Petesch's legal opinion, federal fire reimbursements will be handled more consistently with federal reimbursements in other areas of the state budget. Further, when DNRC requests a supplemental appropriation through HB 3 in the regular session, those requests will be lower.

In the past, the department utilized general fund operating authority to pay for all suppression costs – including reimbursable costs. Then, the legislature made its budget whole through a supplemental appropriation. Now, accounting procedures will be utilized to properly match the reimbursable expenditures against federal special revenue created by the deposit of reimbursement money. Thus, the department's general fund authority will be made whole without having to include reimbursable costs in HB 3.

¹ Agencies include the U.S. Forest Service, the Bureau of Land Management, the Bureau of Indian Affairs, and the National Park Service.